



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILLIAMSON~~
ATTORNEY GENERAL

Hon. S. T. Phelps
County Attorney
Webb County
Laredo, Texas

Dear Sir:

Opinion No. 0-1779

Re: May a county commissioners' court either appropriate current funds of the county or raise money through the channels provided by law for the purpose of purchasing a site for donation to the United States Government for purposes of a military reservation?

Your request for opinion upon the above stated question has been received and considered by this department.

We are unable to find any constitutional or statutory authority for the expenditure or appropriation of county funds by the commissioners' court for the purposes above described.

The courts of Texas have repeatedly held that commissioners' courts may exercise only such authority as is conferred by the constitution and statutes of this state. There are abundant authorities to this effect. We cite the following:

Article 5, Section 18, Constitution of Texas;
Article 2351, Revised Civil Statutes of Texas;
Texas Jurisprudence, Vol. 11, pages 563-566;
Bland vs. Orr, 39 SW 558;
Mills County vs. Lampasas County, 40 SW 404;
Nunn-Warren Publishing Co. vs. Hutchinson County,
45 SW 2nd, 651;
Hogg vs. Campbell, 48 SW 2nd 515;
Landman vs. State, 97 SW 2nd 264;
El Paso County vs. Elam, 106 SW 2nd 393;
Howard vs. Henderson County, 116 SW 2nd 791;
Dodson vs. Marshall, 118 SW 2nd 621.

This department has repeatedly ruled to the same effect. For example, Opinion No. 0-591 of this department held that the commissioners' court of Galveston County, Texas, was without authority to expend county funds for the employment of life guards

for Galveston Beach; Opinion No. 0-1085 of this department held that the commissioners' court of Marion County, Texas, was without authority to pay the salary of a game warden; Opinion No. 0-1299 of this department held that the commissioners' court of Bexar County, Texas, was without authority to expend county funds for fire protection of portions of the county lying outside of the city of San Antonio, and that the county could not contract with the city of San Antonio to furnish such fire protection for such portions of the county; and Opinion No. 0-1001 of this department held that the commissioners' court could not legally make donations to the Tuberculosis Association, to the American National Red Cross or to any other charitable organization making request for such donations.

We call your attention to Article 5885, 5888, Revised Civil Statutes of Texas, which reads as follows:

"Each Commissioners' Court and the Council or Commission of each City or Town in this State is hereby authorized in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the administrative units of the National Guard of this State located in their respective Counties and in or near their respective Cities or towns, not to exceed the sum of One Hundred (\$100.00) Dollars per month for such expenses from any one such Court, Council or Commission for any one organization; and in addition, in behalf of their respective Counties, Cities or Towns, to donate, either in fee simple or otherwise, to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to said Board, one or more tracts of land as sites upon which to construct Armories and other buildings suitable for use by such units; and any and all such donations heretofore made to said Board are hereby validated and any such donation heretofore made to any such administrative unit, either as a corporation or otherwise, and conveyed or to be conveyed to said Board, is hereby validated. As amended Acts 1939, 46th Leg., S. B. #426, § 1."

While this article undoubtedly gives the commissioners' court the power to donate in fee simple or otherwise, to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to said Board, one or more tracts of land as sites upon which to construct Armories or other buildings suitable for use by such units, it does not authorize the commissioners' court to purchase a site for donation to the United States Government for purposes of a military reservation.

You are therefore respectfully advised that it is the opinion of this department that your question should be answered in the negative and it is so answered.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Wm. J. Fanning
Wm. J. Fanning
Assistant

WJF:AW:wc

APPROVED DEC 21, 1939
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman